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be exchanged, identification of all reserved and outstanding interests, stipulation of any necessary cash equalization, and all other terms and conditions necessary to complete an exchange;

(2) Inclusion of the terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and

(3) The agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) The exchange proposal receives any required Secretarial approval;

(5) No objections are raised during any required congressional oversight;

(6) In the event of an appeal under 36 CFR part 215 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

(7) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or to comply with the terms of an exchange agreement, the noncomplying party is liable for all costs borne by the other party as a result of the proposed exchange, including, but not limited to, land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

(d) Absent an executed exchange agreement, an action taken by the parties prior to consummation of an ex-

change does not create any contractual or other binding obligations or rights enforceable against any party.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994, as amended at 64 FR 25822, May 13, 1999]

36 CFR Ch. II (7–1–05 Edition)

§ 254.15 Title standards.

(a) Title evidence.

(1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for the non-Federal lands being conveyed to the United States must be in recordable form and in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) Conveyance documents.

(1) Unless otherwise specified by the USDA Office of the General Counsel, all conveyances to the United States must be prepared, executed, and acknowledged in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States are made by patent, quitclaim deed, or deed and without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(c) Title encumbrances.

(1) Non-Federal lands.

(i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the USDA Office of the General Counsel or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of the land by the United States or would otherwise be inconsistent with

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the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary, except upon special finding by the Chief, Forest Service in the case of States, agencies, or political subdivisions thereof (36 CFR part 251, subpart A).

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to relocation benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall

determine whether the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

§ 254.16 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States v. Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands pass simultaneously and are deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner must be met. The minimum requirements and conditions necessary for recordation include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands;

(2) The issuance of title evidence as of the date of recordation which conforms to the instructions and requirements of the USDA Office of the General Counsel's preliminary title opinion; and

(3) Continuation searches disclosing no matters of record that would require any change in the aforementioned title evidence as issued.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically are segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records must be noted accordingly. Thereafter, the lands will be open automatically to operation of the public land laws and mineral laws, except to the extent otherwise provided by law, unless action is taken pursuant to 43 CFR part 2300 to initiate a withdrawal within the 90-day period.

§ 254.17 Information requirements.

The requirements governing the preparation of an agreement to initiate